

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 32

DURHAM SCHOOL SERVICES, INC.
Employer

and

RAYMOND F. FREITAS, an Individual
Petitioner

Case 32-RD-1477

and

TEAMSTERS LOCAL 78, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO
Union

**SUPPLEMENTAL DECISION AND CERTIFICATION
OF RESULTS OF ELECTION**

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the objections to be conducted and hereby overrules the Union's objections in their entirety, and further, as the Union has not received a majority of valid votes cast in the election, issues a Certification of Results.

The Petition

The Petition in this matter was filed on March 10, 2005.² Pursuant to a Decision and Direction of Election that issued on April 1, an election by secret ballot was conducted on April 29, in the following unit:

All full-time and regular part-time pick-up bus drivers, van drivers, aides, trainers, routers, and dispatchers employed by the Employer at its Hayward and Livermore, California facilities; excluding all mechanics, plant and office clerical employees, guards, all other employees, and supervisors as defined in the Act.

¹ Hereinafter referred to as the Board.

² All dates hereinafter refer to calendar year 2005 unless otherwise noted.

The Tally of Ballots served on the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters.....	182
Number of void ballots.....	2
Number of votes cast for participating labor organization....	53
Number of votes against participating labor organization...	106
Number of valid votes counted.....	159
Number of challenged ballots.....	0
Valid votes counted plus challenged ballots.....	159

Thereafter, the Union filed timely objections to the election, a copy of which was served on the Employer and the Petitioner by the Region.

The Objections

Objection No. 1

1. The Employer provided an incomplete, incorrect, inadequate, *Excelsior* list.

The evidence provided in support of this objection by the Union were copies of eligibility lists it received, which the Union asserts contain some illegible names and addresses, caused because the type is too small to read, and exacerbated by the characteristic degenerative effects that faxing has on the quality of a document. The original eligibility list submitted by the Employer was faxed by the Region to the Union and the Petitioner on April 8. By letter dated April 12, and received by the Region on April 14, the Union notified the Region that the faxed list was “not totally clear.” Therefore, on April 18, the Region sent hard copies of the original list by priority mail to the Union and by regular mail to the Union’s attorney, who acknowledged receipt of the hard copy by letter dated April 20.³

I have carefully examined the copy of the April 8 eligibility list submitted by the Union in support of its claim and find that, although the print is small, it is fully legible.⁴ Although the Union notes that faxed eligibility lists should be printed in 12-point font to

³ Thus, the Union, which has represented the employees in this bargaining unit since being certified in 2001, had in its possession for at least nine days both the April 8 faxed copy of the list and a hard copy of that list.

⁴ To preserve the privacy of the employees listed thereon, a copy of the list submitted by the Union in support of its claim of illegibility is not attached.

ensure clarity, and while that may be a worthwhile recommendation, the Board does not impose a minimum font size for submitted eligibility lists.⁵ As I have determined that the lists in this case were complete and legible, I find that his aspect of the objection lacks merit.

The Union also asserts that the eligibility lists were deficient in that they did not provide telephone numbers, e-mail addresses, or in most cases, the additional four digits to the standard five-digit ZIP codes for employee addresses. However, the *Excelsior*⁶ rule requires only that an employer file with the Regional Director an election eligibility list containing the names and addresses of all eligible voters, which it did. In so doing, the Employer provided the standard five-digit ZIP codes for all employees, which is all that the Postal Service needs for accurate mail delivery.⁷ Additionally, the *Excelsior* rule does not require the employer to supply employee telephone numbers or e-mail addresses. Accordingly, this aspect of the objection lacks merit as well and, therefore, this objection is overruled in its entirety.

Objections Nos. 2, 3, and 4

2. The Employer misdirected employees as to the timing of the election and the date of the election.
3. The Employer offered benefits to employees.
4. The Employer maintained unlawful rules, which interfered with the election.

As the objecting party, the Union has the sole burden of providing evidence in support of its objections. *Builders Insulation Inc.*, 338 NLRB 793 (2003). Section

⁵ As noted above, the election was held at the Employer's two facilities in Hayward and Livermore. Because the first eligibility list combined the employees of the two facilities, the Region requested that the Employer also provide separate lists for each location. Copies of the separate lists were submitted by the Employer on April 25, and faxed to the parties that same day. The employees included on the second lists were the same ones as on the first list, but were divided according to where each employee worked. The Union also submitted copies of the second lists in support of its claim, but again, upon close examination, I have determined that they too were completely legible.

⁶ *Excelsior Underwear*, 156 NLRB 1236 (1966).

⁷ It is noted that when mail is being processed by the Postal Service, after a computer electronically reads to where it is addressed, the entire nine-digit ZIP code is automatically printed on each envelope even if the stated address only contains a five-digit ZIP code.

11392.6 of the Board's Casehandling Manual states that this evidence or description of evidence must be provided to the Regional Office "within 7 days of the day the objections are required to be filed or within such additional time as may have, upon a timely request, been allowed by the Regional Director." Although this period may be extended by the Regional Director, it is, in the absence of an extension, strictly enforced. *Star Video Entertainment L.P.*, 290 NLRB 1010 (1988). To satisfy this burden, the Union may specifically identify witnesses who would provide direct rather than hearsay testimony to support its objections, specifying which witnesses would address which objections. *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983). In the alternative, the Union may provide specific affidavit testimony and other specific evidence in support of its objections *Builders Insulation Inc., supra*. As the Union did not provide the name of any witnesses who could provide direct testimony or any other evidence in support of Objections Nos. 2, 3, and 4, and has not requested any additional time in which to do so, these objections are overruled.

Objection No. 5

5. The Employer interfered with rights guaranteed by Section 7 by punishing one or more employees by falsely reporting to the Unemployment Office.

The only evidence proffered in support of this objection is a copy of a notice dated April 28, 2005 from the State of California's Employment Development Department to a single employee. That notice informed the addressee that, because the Employer's records indicated that the employee had failed to report income for December 2004, the employee owed the State a refund plus interest for unemployment benefits received for that month. The Union neither offered the employee in question, or any other witnesses to support its claim that the Employer had made a false report to the Department, nor provided any explanation how the Employer's alleged actions were related to the Section 7 rights of any employees. In reading the notice, it appears that it was mailed on the day before the election, so there is some question as to whether the notice even arrived at the employee's address prior to the conduct of the election. Finally, the Union proffered no evidence that this employee disseminated to other

employees anything about this notice.⁸ Based on the foregoing, I find this objection lacks merit and it is overruled.

CERTIFICATION OF RESULTS

Pursuant to the authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that a majority of valid votes cast in the election have not been cast for any labor organization, and that no labor organization is the exclusive collective bargaining representative for the employees in the bargaining unit set forth below:

All full-time and regular part-time pick-up bus drivers, van drivers, aides, trainers, routers, and dispatchers employed by the Employer at its Hayward and Livermore, California facilities; excluding all mechanics, plant and office clerical employees, guards, all other employees, and supervisors as defined in the Act

Dated at Oakland, California, this 19th day of May 2005.⁹

/s/ Alan B. Reichard
Alan B. Reichard Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612-5211

⁸ As seen from above, the Union lost the election by more than 50 votes.

⁹ Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, 1099 14th Street, NW, Washington, DC, 20570-0001. Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not part of the record unless included in the Report or appended to the request for review or opposition thereto which a party submits to the Board. The request for review must be received by the Board in Washington, DC by June 2, 2005.